

MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS COMMITTEE
May 18, 2004 at 1:00 P.M.
Room 303, State Capitol Building

Members Present: Sen. Leonard Blackham, Co-chair
 Rep. Ron Bigelow, Committee Co-chair
 Sen. Ron Allen
 Sen. Gene Davis
 Sen. Mike Dmitrich
 Sen. Karen Hale
 Sen. Peter Knudson
 Pres. Al Mansell
 Sen. John Valentine
 Sen. Michael Waddoups
 Rep. Jeff Alexander
 Rep. Greg Curtis
 Rep. Patricia Jones
 Rep. Brad King
 Rep. Karen Morgan
 Speaker Martin Stephens
 Rep. Michael Styler
 Rep. Rebecca Lockhart, Vice-Chair
 Sen. Bill Hickman, Vice-Chair

Members Excused: Rep. Brent Goodfellow

Staff Present: John Massey, Legislative Fiscal Analyst
 Michael Kjar, Deputy Director, Fiscal Analyst
 Lynette Erickson, Secretary

Others Present: Attorney General Mark Shurtleff
 Scott Mecham, Chief Administrative Officer, Attorney General's Office
 Michael Sibbett, Board of Pardons

List of Others Present on File

Committee Co-Chairman Ron Bigelow called the meeting to order at 1:15 p.m.

1. Approval of Minutes

Motion: Sen. Valentine made a motion to approve the minutes of April 20, 2004. The motion passed unanimously with Sen. Allen, Pres. Mansell, Reps. Alexander, Curtis, Lockhart and Speaker Stephens absent at the time of voting.

Sen. Blackham welcomed back, to applause from those present, Bill Greer of the Legislative Fiscal Analyst Office, who recently returned from serving over a year in Iraq.

2. Attorney General - Report on distribution of market comparability adjustments

Attorney General Mark Shurtleff expressed his thanks for funding to give assistant attorneys pay increases saying it has helped their office moral and allowed them to maintain the legal representation the State deserves. He directed attention to a memo dated May 13, 2004 which included cost breakdowns and compensation tables. Scott Mecham, Chief Administrative Officer, Attorney General's Office, reviewed the tables and information saying they had allocated market comparability adjustments by moving the bottom step of each attorney grade range up by two steps with corresponding adjustments along each range. They plan to request supplemental money next session to cover the impact of the increased salaries on state agencies for attorneys that just work just for agencies.

Rep. Bigelow questioned if there is anything that prevents the Attorney General's Office to set aside funds for attorneys that only do work for agencies, so that they are not required to come back for a supplemental. John Massey's clarified that it depends on the funding source for the other agencies and it is better to appropriate funding to other agencies once the legal cost of the agency is known. Jonathan Ball explained that this is consistent with current practice of state agencies billing other state agencies for time or work done. First they determine the rate, then reimburse that. All agencies that hire assistant attorney generals do so on a contract basis. Sen Valentine suggested in the future, they look at it in the budgetary process rather than having to come back for supplemental. Attorney General Shurtleff clarified a question from Sen. Hickman, that raises were given across the board.

3. Department of Corrections - Report on options for housing the female offender population.

Mike Chabries, Executive Director of the Utah Department of Corrections (UDC) returned, as directed in last months meeting, to give an update on a new facility for female inmates. He said he had recently received a letter from the commission asking if they would consider a long term lease for the Oxbow facility rather than purchasing the facility.

Scott Carver, Deputy Director, UDC, reviewed projected growth in both female and male inmates saying that the state will be out of beds in September of this year. There was a sharp incline in January of the female population and the male population has been increasing recently.

Since purchase of the Oxbow jail at this time seems unlikely, they are looking at other alternatives. Currently available, but unfunded is a 300 bed minimum security VOI/TIS dorm building and 100-150 beds are available in county jails. They plan to use 50 county jail beds as a leak valve to keep their population in check through the next fiscal year. If the projections hold true, they will need 250-300 prison beds by FY 2006. Sen. Hickman questioned the success of the early release program and if when the male population was low in 2002 was due to early release, then followed with significant incline from October 2002 up to April 2004, how many were repeat offenders.

Mike Sibbett, Chairman, Board of Pardons and Parole, responded they had carefully tracked early release inmates and had found recidivism was minor. He said they originally started looking at 1,100 inmates for early release and released a little over 200, 25%. There is now a much smaller pool to consider for early released. Those committed to prison now are mostly sex or violent offenders. Mr. Chabries suggested the system should look at front end solutions, look for alternatives there rather than at the end of the system. Sen. Hickman concluded that both scenarios are expensive and there isn't an inexpensive way to do it.

Rep. Jones questioned why the female population was going up. Scott Carver responded that today there 20 beds available, but they were out of beds at the peak. There is need for roughly 250 more beds for the entire population in women's prison. One option is to construct a 550-bed facility at the current site. A second option would be to construct a 288- bed facility at the Gunnison site. To manage growth for FY 2005, Mr. Carver suggested they shuffle the population by opening the 300 bed VOI/TIS facility and moving the minimum security work release inmates there.

Sen. Waddoups asked if there was still any consideration long term to move from the present facility as was mentioned two years ago. Mr. Chabries said the previous director had said that and he gets asked it all the time. He said the current management plan does not locate the prison anywhere else. Mr. Chabries clarified that their original plan was to come back for funding for the Oxbow facility. Since that facility no longer seems available, they plan on coming back for the same funding, but for somewhere else.

Sen. Valentine asked, officially for the record, for Mr. Chabries to clarify the current status of the Oxbow facility. He responded that he had just received a letter from the Chairman of the council asking if they would be willing to negotiate a lease of the Oxbow jail for an extended period of time. He hadn't had an opportunity to talk with his budget director, who was out of town, and he wanted to talk with him and John Massey before they responded to the letter. At this time, nothing is permanent, but it is his understanding that a sale is now not part of the negotiation, only a lease for a certain period of time. They have not had a formal response that

said there is any deal for the sale.

Rep. Bigelow said he believed in the long term we are better off building it right from the start and that a long term lease doesn't solve our problems. It seems like it is always better off to have our own facilities that meet our own needs and we need to be very cautious about entering into a long term lease for a prison facility.

Rep. Styler and President. Mansell asked about the cost of the options for the women's prison. Mr. Carver responded that for the preferable Option 1, they had contacted a private architectural firm which gave a quick rough estimate of \$34 million. They also looked at a state proposal from 1997 that ran up to \$50-60 million. The Gunnison option would cost approximately \$8.8 million to construct and approximately \$5 million for infrastructure. The housing for Option 2 is very undesirable for females for privacy.

Co-Chairman Blackham requested they continue to work with staff and come backs each month there is new information with an update, but advised they not spend any money until they come back.

4. Governor's Office of Planning and Budget - New reporting format for Federal Funds

Due to time constraints, this item on the agenda was saved for a future meeting.

5. Office of the Legislative Fiscal Analyst, Legislative Research and General Counsel, and Utah State Office of Education - Report on the use of funds associated with the Governor's vetoes

Michael Kjar gave an update on the veto of Item 65 in the appropriations budget relating to SB 154 charter schools. Since the governor vetoed this line item, the monies were no longer available. The question had arisen whether the State Office of Education (USOE) should be able to use funds currently in their budget for this.

Patrick Ogden, Interim Superintendent, USOE, discussed with the committee, their understanding of what funds were still available, where they were from and how they should be spent.

Mr. Kjar responded to a question from Rep. Morgan and explained that instead of transferring \$350,000 from the Schools for the Deaf and Blind, they had offset it in the USOE budget. The deaf and blind budget was reduced by \$350,000, the money went to the uniform school fund. The State Office of Education budget was reduced by \$1,200,000 then increased by \$350,000 to accommodate the funding for the Jean Massieu Charter School. The appropriation to the Utah School for the Deaf and the Blind was reduced by \$350,000 but not transferred to the USOE and there is still question because of the veto if the intent to fund the Jean Massieu Charter School is still there. The State Office of Education believes they still have the money to

spend since all of the funding items are within the same line item. Rep. Bigelow questioned when does funding merge into anything other than what it was intended.

Dee Larson, Associate General Counsel, explained the USOE felt that because monies had been appropriated, they could then be merged with other funds as nonlapsing funds with no restrictions attached to them. There is disagreement on this issue. Mr. Ogden responded that the legislature failed to make the intent clear.

Sen. Hickman reaffirmed that it is never intended that funding be merged. He said, "when we pass specific things, it does not allow for your office to do creative things. What your saying is no matter what we pass, the money goes to your office and you can do whatever you want. Intent is very clear."

Speaker Stephens stated that he doesn't think there is any doubt the legislature would prefer they not spend this money, but they feel it is their right and ability to spend the way they want, even though that is not the intent or what the Legislature wants.

Mr. Kjar, clarified that there are two different interpretations and both are partially right. They used a technical mechanism to move money as intended by the Legislature. There was clear intent of the subcommittee to fund Jean Massieu Charter School. Rather than move money into the USOE budget and back out again, they used a simple accounting mechanism through adding needed funds and subtracting intended reductions to create the net amount needed to fund the appropriate purposes intended by the Legislature.

The committee discussed and questioned Superintendent Ogden at length regarding the intent of the legislature regarding SB 154, how much of and for what the funding appropriated had been spent. He reported that \$162,000 had been spent for educational summits where valuable input was gathered moving them toward competency based education. Superintendent Ogden stated that he was glad the governor had vetoed Item 65 and it was his understanding that at the end of the year, the remaining money would move into nonlapsing funds to be spent within the line item of the USOE, but if the committee took a strong vote that money not be used the way they desired, they would go back and try to find other funds to fund the Jean Massieu Charter School. He said he failed to predict this committee would be a stumbling block for legislative intent.

Co-Chairman Blackham stressed that when a bill is passed with funds attached, they are very concerned about money unspent going into non lapsing funds at the end of the year. Legislation was passed and money should continue to be spent as directed, not become free money. While he acknowledged why there is confusion, it is the committee assumption that the \$1.2 million reduction be used for student achievement and to implement SB 154.

Rep. Morgan expressed frustration and said she wants it to be very clear that the committee

intent was to take money and make a line item appropriation. In the future, she suggested not taking funds that could be vetoed.

MOTION: Rep. Ron Bigelow moved that the committee first direct the USOE that they do not have authority to spend appropriations in violation of the Budgetary Procedures Act and Utah Code Annotated 53A-17a-105(7), and second request that the Legislative Auditor General be asked to audit the USOE relative to the transfer of funds between programs and line items including the use of nonlapsing funds.

The intent of this, Rep. Bigelow said is, while the USOE had acted in good faith, clearly the intent language was vetoed and therefore it doesn't matter what the intent was, it is not law. He said we have to go with what is there, even if we make a mistake, or if our staff makes a mistake and takes money from the wrong fund, we have to live with what is in writing. We need to understand what is happening, make it clear and get the State Office of Education and the Legislature on the same page as to how they are spending money.

Sens. Dmitrich and Allen spoke against the motion. Rep. Alexander spoke in favor of the motion, particularly having an audit done.

Rep. Curtis asked Superintendent Ogden how they planned to spend the approximately \$1.5 million left in the funding of SB 154, to which he responded for a pilot program.

Rep. Bigelow restated his motion.

MOTION: Rep. Ron Bigelow moved that the committee first direct the USOE that they do not have authority to spend appropriations in violation of the Budgetary Procedures Act and Utah Code Annotated 53A-17a-105(7) and second that the Legislative Audit Committee be asked for an audit of the USOE relative to the transfer of funds between programs and line items including the use of nonlapsing funds. The motion passed with Sens. Blackham, Hickman, Knudson, Mansell, Valentine and Waddoups and Reps. Bigelow, Alexander, Jones, Lockhart, Morgan, Stephens and Styler voting in the affirmative and Sens. Allen, Davis, Dmitrich and Hale and Reps. Curtis and King voting against the motion.

MOTION: Sen. Waddoups made a motion to adjourn the meeting. The motion passed unanimously.

The meeting adjourned at 3:15 p.m.

Minutes reported by Lynette Erickson.

